

AUG 16 2006

~~DOCKET NO.~~ 2002.02.004.NS0
U.S. SERIAL NO. 10/038,872
PATENT

REMARKS

Claims 1-26 were originally filed in the present application.

Claims 1-26 were previously cancelled

Claims 27-50 were previously added.

Claims 27-50 are pending in the present application.

Claims 27-50 were rejected in the December 1, 2005 Office Action.

No claims have been allowed.

No claims are amended herein

Claims 27-50 remain in the present application.

Reconsideration of the claims in light of the following arguments is respectfully requested.

Initially, the Applicant notes that in Sections 3-8 of the June 16, 2006 Office Action, the Examiner rejects cancelled Claims 1-26. The Applicant assumes that the Examiner intended to reassert the rejections made in the Office Action mailed December 1, 2005 and will respond to those rejections, instead.

In Sections 1 and 2 of the December 1, 2005 Office Action, the Examiner rejected Claims 27-31 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,671,259 to He, et al. (hereafter, simply "*He*"). The Applicant respectfully traverses this rejection.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131, p. 2100-76 (8th ed., rev. 4, October 2005) (*citing In re Bond*, 910 F.2d

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831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)) (*Emphasis added*). The Applicant respectfully submits that in making the § 102 rejection the Examiner has asserted that disparate elements of the *He* reference, arranged differently than in the claims of the present application, anticipate the elements of the claims.

Claim 27 recites an identity server process that comprises a primary-backup identity server group. The *He* reference describes load balancing server (LBS) selectors that select a load balancing (LB) server to choose a server to provide a requested service. However, the Examiner turns the arrangement of elements of the *He* reference on its head in asserting that its servers teach an identity server process comprised of a primary-backup identity server group, taught by a second LBS selector backing up a first LBS selector. The LBS selectors are not components of the servers and therefore cannot teach a primary-backup identity server group that is a component of an identity server process.

Claim 27 also recites a primary identity server application that executes on a call application node. The Examiner asserts that the servers of the *He* reference teach call application nodes and the LBS selectors teach primary and backup identity server applications. In so doing, the Examiner makes the unsupportable assertion that the LBS selectors teach an application that executes on a server.

For these reasons, the Applicant respectfully asserts that the *He* reference fails to describe every element of Claim 27, arranged as they are in the claim. This being the case, Claim 27 presents patentable subject matter over the *He* reference. Additionally, dependent Claims 28-31, which

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depend from Claim 27, contain all of the unique and novel limitations recited in independent Claim 27. Claims 28-31 are therefore patentable over the *He* reference.

In Sections 3 and 4 of the December 1, 2005 Office Action, the Examiner rejected Claims 32-38 under 35 U.S.C. § 103(a) as being unpatentable over *He* in view of U.S. Patent Application Publication No. 2004/0039820 A1 to Colby, et al. (hereafter, simply "*Colby*"). In Section 5 of the Office Action, the Examiner rejected Claims 39-43 under 35 U.S.C. § 103(a) as being unpatentable over *He* in view of U.S. Patent No. 5,754,959 to Ueno, et al. (hereafter, simply "*Ueno*"). In Section 6 of the Office Action, the Examiner rejected Claims 44-50 under 35 U.S.C. § 103(a) as being unpatentable over *He* in view of *Ueno* in further view of *Colby*. The Applicant respectfully traverses these rejections.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-133 (8th ed. rev. 4, October 2005). To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings and there must be a reasonable expectation of success. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

As argued with regard to the § 102 rejection of Claims 27-31, the *He* reference fails to teach every element of Claim 27, arranged as they are in the claim. Independent Claim 39 recites

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limitations analogous to those in Claim 27 and arranged similarly. As such, the *He* reference fails to teach every element of Claim 39, arranged as they are in the claim. The Examiner fails to suggest in the § 103 rejections of Claims 32-50 a suggestion or motivation to rearrange the elements of the *He* reference to form the elements of the claims of the present application, arranged as they are in the claims. Furthermore, the Examiner fails to argue why a person of skill in the art would have had a reasonable expectation of success in such a rearrangement.

For these reasons, the Examiner has failed to establish a *prima facie* case of obviousness. This being the case, Claim 39 presents patentable subject matter over the *He* reference. Additionally, dependent Claims 32-38 and 40-50, which depend from Claims 27 and 39, respectively, contain all of the unique and novel limitations recited in their base claims. Claims 32-38 and 40-50 are therefore patentable over the cited references.

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SUMMARY

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at jmockler@munckbutrus.com.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK BUTRUS, P.C.

Date:

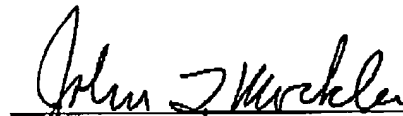
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